



December 6, 2016

VIA EMAIL

Freedom of Information Officer
U.S. Environmental Protection Agency Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3590
R5foia@epa.gov

**Re: Documents Supporting the Notices of Violation and Findings of Violation for
Indianapolis Power & Light's Petersburg, Indiana Generating Station**

Dear Records Custodian:

On behalf of the Sierra Club, I am writing to request that the U.S. Environmental Protection Agency ("EPA") provide copies of the records described below pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), and the EPA regulations at 40 C.F.R. § 2.100, *et seq.*

The Sierra Club is the nation's oldest environmental organization. It is dedicated to the protection and preservation of the natural and human environment. The Sierra Club is committed to solving the pressing environmental and health problems associated with the mining, burning and disposal of coal and its combustion by-products.

This FOIA request concerns the Petersburg Generating Station in Pike County, Indiana. The Petersburg Generating Station is a coal-burning power plant with four boiler units, operated by Indianapolis Power and Light Company ("IPL"). EPA Region 5 issued Notice and Finding of Violation letters for Petersburg Generating Station's violations of the Clean Air Act and the Indiana State Implementation Plan on September 23, 2015 and February 5, 2016. The September 23, 2015 letter is included with this request as Attachment A and the February 5, 2016 letter is included as Attachment B.

Documents Requested

Please provide copies of the following records:

1. All documents that support or underlie EPA's finding—reflected in the Notice and Finding of Violation, dated Sept. 23, 2015, sent to IPL (Attachment A)—of opacity emissions in excess of applicable limits at the Petersburg Generating Station, including, without limitation, documents reflecting visible emissions

readings taken for Petersburg Boiler 3 on July 13, 2015, July 14, 2015, and July 20, 2015, respectively.

2. All documents that support or underlie EPA's finding—reflected in the Notice and Finding of Violation, dated Feb. 5, 2016, sent to IPL (Attachment B)—that IPL has violated applicable Prevention of Significant Deterioration, New Source Review, New Source Performance Standard, and/or Indiana State Implementation Plan requirements at the Petersburg Generating Station, including, without limitation:
 - a. The March 23, 2011 pre-project notification letter (including attachments);
 - b. The October 10, 2013 pre-project notification letter (including attachments);
 - c. Any documents, whether produced by EPA, IPL, or a third party, relating to the projects described in the March 23, 2011 and October 10, 2013 pre-project notification letters, including any analyses or discussion of changes in the plant's emissions of New Source Review pollutants;
 - d. Documents reflecting operation of Petersburg Generating Station's sulfuric acid mitigation systems;
 - e. Documents reflecting Petersburg Generating Station's quarterly excess emission reports; and
 - f. Documents reflecting continuous opacity monitoring data.
3. All documents that indicate any violations of applicable air emissions limits at the Petersburg Generating Station for the period January 1, 2015 through the present, to the extent that those records are not produced in response to requests 1 and 2 above.

Exempt Records

Should you decide to invoke a FOIA exemption with regard to any of the requested records, please include in your full or partial denial letter sufficient information for the Sierra Club to appeal the denial. To comply with legal requirements, the following information must be included:

1. Basic factual material about each withheld item, including the originator, date, length, general subject matter, and location of each item; and
2. Explanations and justifications for denial, including the identification of the category within the governing statutory provision under which the document (or portion thereof) was withheld and a full explanation of how each exemption fits the withheld material.

If you determine that portions of a record requested are exempt from disclosure, please redact the exempt portions and provide the remainder of the record to the Sierra Club at the address listed below.

Fee Waiver Request

I respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l). The Sierra Club has spent years promoting the public interest through the development of policies that protect human health and the environment, and has routinely received fee waivers under FOIA.

The Sierra Club is a national, nonprofit, environmental organization with no commercial interest in obtaining the requested information. Instead, the Sierra Club intends to use the requested information to inform the public, so the public can meaningfully participate in the dialog concerning pollution generated by the Petersburg facility.

As explained below, this FOIA request satisfies the factors listed in EPA's governing regulations for waiver or reduction of fees, as well as the requirements of fee waiver under the FOIA statute – that “disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii), *see also* 40 C.F.R. § 2.107(l).

1. The subject matter of the requested records must specifically concern identifiable “operations and activities of the government.”

The activities denoted in this request are “identifiable operations or activities of the government.” The Department of Justice Freedom of Information Act Guide expressly concedes that “in most cases records possessed by a federal agency will meet this threshold” of identifiable operations or activities of the government.

2. The disclosure of the requested documents must have an informative value and be “likely to contribute to an understanding of Federal government operations or activities.”

The Freedom of Information Act Guide makes it clear that, in the Department of Justice's view, the “likely to contribute” determination hinges in substantial part on whether the requested documents provide information that is not already in the public domain. The requested records are “likely to contribute” to an understanding of your agency's operations or activities because they are not otherwise in the public domain and are not accessible other than through a FOIA request. The requested information will facilitate meaningful public participation in the Clean Air Act enforcement process, therefore fulfilling the requirement that the documents requested be “meaningfully informative” and “likely to contribute” to an understanding of your agency's enforcement of federal environmental statutes and regulations.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons. Under this factor, the identity and qualifications of the requester—i.e., expertise in the subject area of the request and ability and intention to disseminate the information to the public—is examined.

The Sierra Club and its members have a longstanding interest and expertise in the subject of Clean Air Act enforcement with respect to coal-burning power plants. More importantly, the Sierra Club unquestionably has the "specialized knowledge" and "ability and intention" to disseminate the information requested in the broad manner, and to do so in a manner that contributes to the understanding of the "public-at-large."

The Sierra Club intends to disseminate the information it receives through FOIA regarding these government operations and Clean Air Act enforcement activities in a variety of ways, including but not limited to, analysis and distribution to the media, distribution through publication and mailing, posting on the organization's website, emailing and list-serve distribution to members.

4. The disclosure must contribute "significantly" to public understanding of government operations or activities. The public's understanding must be likely to be enhanced by the disclosure to a significant extent.

The records requested will contribute to the public understanding of the government's role in enforcing Clean Air Act requirements, or its "operations and activities," associated with IPL's Petersburg facility. Further, the disclosure of the requested records is essential to public understanding of the potential impacts of emissions from this facility. After disclosure of these records, the public's understanding of the potential impacts of emissions from this facility will be significantly enhanced. The requirement that disclosure must contribute "significantly" to the public understanding is therefore met.

5. Whether the requester has a commercial interest that would be furthered by the requested disclosure.

The Sierra Club has no commercial interest in the requested records. Nor does it have any intention to use these records in any manner that "furthers a commercial, trade, or profit interest" as those terms are commonly understood. The Sierra Club is a tax-exempt organization under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code, and as such has no commercial interest. The requested records will be used for the furtherance of the Sierra Club's mission to inform the public on matters of vital importance to the environment and public health.

6. Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

When a commercial interest is found to exist and that interest would be furthered by the requested disclosure, an agency must assess the magnitude of such interest in order to compare it to the "public interest" in disclosure. If no commercial interest exists, an assessment of that non-existent interest is not required.

As noted above, the Sierra Club has no commercial interest in the requested records. Disclosure of this information is not "primarily" in the Sierra Club's commercial interest. On the other hand, it is clear that the disclosure of the information requested is in the public interest. It

December 6, 2016

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will contribute significantly to public understanding of the potential impacts of emissions from these facilities.

The Sierra Club respectfully requests, because the public will be the primary beneficiary of this requested information, that EPA waive processing and copying fees pursuant to 5 U.S.C. § 552(a)(4)(A). In the event that your agency denies a fee waiver, please send a written explanation for the denial. Also, please continue to produce the records as expeditiously as possible, but in any event no later than the applicable FOIA deadlines.

Record Delivery

In responding to this request, please comply with all relevant deadlines and other obligations set forth in FOIA and the agency's regulations. 5 U.S.C. § 552, (a)(6)(A)(i); 40 C.F.R. § 2.104. Please produce the records above by sending them to me at the address listed below. Please produce them on a rolling basis; at no point should the search for—or deliberation concerning—certain records delay the production of others that the agency has already retrieved and elected to produce.

If possible, please send all documents in PDF format via electronic mail, external website, or on CD or DVD via traditional mail. Alternatively, paper copies are acceptable, but electronic format is preferred. Please send all requested records as soon as possible to:

Tony Mendoza
Sierra Club Environmental Law Program
2101 Webster Street, Suite 1300
Oakland, CA 94612

Thank you for your cooperation. If you find that this request is unclear in any way please do not hesitate to call me to see if I can clarify the request or otherwise expedite and simplify your efforts to comply.

/s/ Tony G. Mendoza

Tony Mendoza
Staff Attorney
Sierra Club Environmental Law Program
2101 Webster Street, Suite 1300
Oakland, CA 94612
(415) 977-5589
tony.mendoza@sierraclub.org

Attachment A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 23 2015

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

REPLY TO THE ATTENTION OF:

Jeff Harter, Petersburg Station
Indianapolis Power & Light Company
1 Monument Circle
Indianapolis, Indiana 46204

Re: Notice and Finding of Violation
Indianapolis Power and Light Company
Petersburg, Indiana

Dear Mr. Harter:

The U.S. Environmental Protection Agency is issuing the enclosed Notice and Finding of Violation ("NOV/FOV") to Indianapolis Power and Light Company ("you") under Section 113(a) of the Clean Air Act, 42 U.S.C. § 7413(a). We find that you have violated the following at the Petersburg, Indiana Generating Station: the New Source Performance Standards for Fossil Fuel Fired Steam Generators for Which Construction Is Commenced After August 17, 1971, at 40 C.F.R. Part 60, Subpart D; the Indiana State Implementation Plan; and your Title V operating permit.

Section 113 of the Clean Air Act gives us several enforcement options. These options include issuing an administrative compliance order, issuing an administrative penalty order and bringing a judicial civil or criminal action.

We are offering you an opportunity to confer with us about the violations alleged in the NOV/FOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply and the steps you will take to prevent future violations. In addition, in order to make the conference more productive, we encourage you to submit to us information responsive to the NOV/FOV prior to the conference date.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contacts in this matter are Shilpa Patel and Ethan Chatfield. You may call her or him at (312) 886-0120 or (312) 886-5112, respectively, to request a conference. You should make the request within 10 calendar days following receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,



George J. Czerniak
Director
Air and Radiation Division

Enclosure

cc: Phil Perry, Branch Chief
Office of Air Quality / Compliance Branch
Indiana Department of Environmental Management
100 North Senate Avenue / Room IGCN 1003
Indianapolis, Indiana 46204-2251

1. The Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401 (b)(1).

Indiana State Implementation Plan

2. Pursuant to Section 110 of the Act, 42 U.S.C. § 7410, EPA approved 326 IAC 5-1; Opacity Limitations, as part of the federally enforceable Indiana SIP for Particulate Matter (PM) on July 16, 2002 (67 Fed. Reg. 46589).

3. 326 IAC 5-1-2 states that, unless otherwise stated, opacity shall meet the following limitations: (A) Opacity shall not exceed an average of forty percent in any one six-minute averaging period, and (B) Opacity shall not exceed sixty percent for more than a cumulative total of fifteen minutes in a six-hour period.

New Source Performance Standards

4. Pursuant to Section 111 of the Act, 42 U.S.C. § 7411, EPA promulgated 40 C.F.R. Part 60, subpart D. This includes § 60.42(a)(2), which states that "no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility any gases that exhibit greater than 20 percent opacity except for one six-minute period per hour of not more than 27 percent opacity."

Title V

5. Section 502(d)(1) of the Act, 42 U.S.C. § 7661a(d)(1), requires each State to develop and submit to EPA an operating permit program which meets the requirements of Title V. On November 14, 1995 (60 Fed. Reg. 57188), EPA granted Indiana interim approval of its program, with final approval on July 30, 2001 (66 Fed. Reg. 39293).

6. EPA promulgated full approval of Indiana's Title V program on December 4, 2001. Indiana's Title V program became effective on November 30, 2001 (66 Fed. Reg. 62969).

7. The Indiana regulations governing the Title V permitting program are codified at 326 IAC 2-7.

8. The Indiana Department of Environmental Management ("IDEM") issued a Title V Operation Permit (T 125-6565-00002) to IPL for the Petersburg Generating Station on December 22, 2008 and July 18, 2013. Additionally, IDEM issued a Second Significant Permit Modification (T125-33773-0002) on June 18, 2015. The permit contains the following relevant provisions for purposes of this NOV/FOV:

- a. Section C.2 – Opacity: Pursuant to 326 IAC 5-1-2 (Opacity Limitations), except as provided in 326 IAC 5-1-3 (Temporary Alternative Opacity Limitations), "opacity shall meet the following, unless otherwise stated in this permit: (a) Opacity shall not exceed an average of forty percent in any one six minute averaging period as determined in 326 IAC 5-1-4. (b) Opacity shall not exceed sixty percent for more than a cumulative total of fifteen minutes in a six hour period."

twenty percent (20%) opacity except for one six-minute period per hour of not more than twenty-seven percent (27%) opacity.

FACTUAL BACKGROUND

9. IPL is an Indiana corporation.
10. IPL is a "person," as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
11. At all times relevant to this NOV/FOV, IPL was the owner and/or operator of the Petersburg Generating Station.
12. The Petersburg Generation Station has four steam generating boilers used to produce electricity provided to the grid. These boilers, Boilers 1 through 4, are all coal-fired boilers.
13. Petersburg Boiler 3 is subject to requirements of the Indiana SIP, NSPS Subpart D and Title V.
14. At all times relevant to this NOV/FOV, the Petersburg Generating Station has been located in an area that was classified as attainment or unclassifiable for PM, pursuant to Section 107(d) of the Act, 42 U.S.C. § 7407(d).
15. On July 13, 2015, EPA took visible emissions readings of the stack for Boiler 3 at the Petersburg Generation Station in accordance with EPA Alt. Method 082 and observed a maximum 6-minute average opacity of 52.7%. EPA observed opacity in excess of the NSPS limit of 20% and the Indiana SIP limit of 40% for seventeen 6-minute periods.
16. On July 13, 2015, EPA took visible emissions readings of the stack for Boiler 3 at the Petersburg Generation Station in accordance with EPA Method 9 and observed a maximum 6-minute average opacity of 53%. EPA observed opacity in excess of the NSPS limit of 20% and Indiana SIP limit of 40% limit for twenty-five 6-minute periods.
17. On July 14, 2015, IDEM took visible emissions readings of the stack for Boiler 3 at the Petersburg Generation Station in accordance with EPA Method 9 and observed a maximum 6-minute average opacity of 40.8%. IDEM observed opacity in excess of the NSPS limit of 20% for seven 6-minute periods and Indiana SIP limit of 40% for one six 6-minute periods.
18. On July 20, 2015, EPA took visible emissions readings of the stack for Boiler 3 at the Petersburg Generation Station in accordance with Method Alt. 082 and observed a maximum 6-minute average opacity of 52.7%. EPA observed opacity in excess of the 20% and 40 % limit for twenty-seven 6-minute periods.

VIOLATIONS

19. IPL's Boiler 3 violated and continues to violate the Indiana SIP, NSPS Subpart D, and its Title V Permit by exceeding the 20% and 40% opacity limitation, as a 6-minute average.

VIOLATIONS

19. IPL's Boiler 3 violated and continues to violate the Indiana SIP, NSPS and its Title V Permit by emitting PM in excess of the applicable opacity limits.

Environmental Impact of Violations

20. Violation of the opacity limits increases public exposure to unhealthy particulate matter. Particulate matter, especially fine particulate, contributes to respiratory problems, lung damage and premature deaths.

Date

9/23/15


George T. Czerniak
Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Loretta Shaffer, certify that I sent a Notice and Finding of Violation, No. EPA-5-15-IN-11, by Certified Mail, Return Receipt Requested, to:

Jeff Harter, Environmental Manager
Indianapolis Power & Light Company
Petersburg Generating Station
6925 N. State Road 57
P.O. Box 436
Petersburg, Indiana 47567-0436

I also certify that I sent copies of the Notice of Violation and Finding of Violation by first-class mail to:

Phil Perry, Branch Chief
Office of Air Quality / Compliance Branch
Indiana Department of Environmental Management
100 North Senate Avenue/Room IGCN 1003
Indianapolis, Indiana 46204-2251

On the 24 day of September 2015.



Loretta Shaffer
Program Technician
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER: 7014 2870 0001 9581 4335

Attachment B



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

FEB 05 2016

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jeff Harter, Petersburg Station
Indianapolis Power & Light Company
6925 N. State Road 57
P.O. Box 436
Petersburg, Indiana 47567-0436

Re: Notice and Finding of Violation
Indianapolis Power & Light Company
Petersburg Generating Station

Dear Mr. Harter:

The U.S. Environmental Protection Agency is issuing the enclosed Notice and Finding of Violation (NOV/FOV) to Indianapolis Power & Light Company (IPL) under Section 113(a) of the Clean Air Act ("the Act"), 42 United States Code (U.S.C.) § 7413(a). We find that IPL has violated the following Clean Air Act requirements at its Petersburg Generating Station: the Prevention of Significant Deterioration requirements under Part C of the Act, 42 U.S.C. §§ 7470 *et seq.*; the Non-Attainment New Source Review requirements under Part D of the Act, 42 U.S.C. §§ 7501 *et seq.*; the New Source Performance Standards for Fossil Fuel Fired Steam Generators for Which Construction Is Commenced After August 17, 1971, at 40 C.F.R. Part 60, Subpart D; the Indiana State Implementation Plan (SIP); and the requirements for the Petersburg Generating Station operating permit, issued under Title V of the Act, 42 U.S.C. §§ 7661 *et seq.*


Section 113 of the Act gives us several enforcement options. These options include issuing an administrative compliance order, issuing an administrative penalty order and bringing a judicial civil or criminal action.

We are offering IPL the opportunity to confer with us about the violations alleged in the attached NOV/FOV. The conference will give IPL an opportunity to present information on the specific findings of violation, any efforts IPL have taken to comply and the steps IPL will take to prevent future violations. In addition, in order to make the conference more productive, we encourage IPL to submit to us any information responsive to the NOV/FOV prior to the conference date.

Please plan for the facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contacts in this matter are Shilpa Patel and Ethan Chatfield. You may contact her/him at (312) 886-0120 and (312) 886-5112 or at patel.shilpa@epa.gov or chatfield.ethan@epa.gov, respectively to request a conference. You should make the request within 10 calendar days following receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,



George T. Ozerniak
Director
Air and Radiation Division

Enclosure

cc: Phil Perry, Branch Chief
Office of Air Quality / Compliance Branch
Indiana Department of Environmental Management
100 North Senate Avenue / Room IGCN 1003
Indianapolis, Indiana 46204-2251

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

**Indianapolis Power & Light Company
Petersburg, Indiana**

Proceedings Pursuant to
the Clean Air Act
42 U.S.C. §§ 7401 *et seq.*

**NOTICE OF VIOLATION and
FINDING OF VIOLATION**

EPA-5-16-IN-03

NOTICE AND FINDING OF VIOLATION

The U.S. Environmental Protection Agency (EPA) is issuing this Notice and Finding of Violation (NOV/FOV) in accordance with Section 113(a)(1) and (3) of the Clean Air Act ("the Act"), 42 United States Code (U.S.C.) § 7413(a)(1) and (3).

EPA finds that the Indianapolis Power & Light Company (IPL) has violated and continues to violate the Act, 42 U.S.C. §§ 7401 *et seq.*, its implementing regulations, the Indiana State Implementation Plan (SIP), the Prevention of Significant Deterioration (PSD) rules, the Non-Attainment New Source Review requirements, the New Source Performance Standards for Fossil Fuel Fired Steam Generators at 40 Code of Federal Regulations (C.F.R.) Part 60, Subpart D, and its Title V Operating Permit at the Petersburg Generating Station located in Petersburg, Indiana (Petersburg Station or Facility). These exceedances constitute violations of the Act.

STATUTORY AND REGULATORY AUTHORITY

1. The Clean Air Act is designed to "protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." Section 101(b)(1) of the Act, 42 U.S.C. § 7401 (b)(1).

Prevention of Significant Deterioration Requirements

2. When the Act was passed in 1970, Congress exempted existing facilities, including the coal-fired power plant that is the subject of this Notice, from many of its requirements. However, Congress also made it quite clear that this exemption would not last forever. As the United States Court of Appeals for the D.C. Circuit explained in *Alabama Power v. Costle*, 636 F.2d 323, 400 (D.C. Cir. 1979), "[t]he statutory scheme intends to 'grandfather' existing industries; but...this is not to constitute a perpetual immunity from all standards under the PSD program." Rather, the Act requires grandfathered facilities to install modern pollution control devices whenever the unit is proposed to be modified in such a way that its emissions may increase.

3. On June 19, 1978, EPA promulgated regulations pursuant to Part C of Title I of the Act. 43 *Fed. Reg.* 26403 (June 19, 1978).

4. The PSD provisions of Part C of Title I of the Act require preconstruction review and permitting for modifications of stationary sources in attainment/unclassifiable areas. See 42 U.S.C. §§ 7470-7492. Pursuant to applicable regulations, if a major stationary source located in an attainment area is planning to make a major modification, then that source must obtain a PSD permit before beginning actual construction. See 40 C.F.R. § 52.21(a)(1)(iii). To obtain this permit, the source must, among other things, undergo a technology review and apply Best Available Control Technology (BACT); perform a source impact analysis; perform an air quality analysis and modeling; submit appropriate information; and conduct additional impact analyses as required.

5. On March 3, 2003, EPA conditionally approved Indiana's PSD program. 68 *Fed. Reg.* 9892 (effective April 2, 2003). On June 18, 2007, EPA partially approved revisions related to EPA's NSR Reform regulations in Indiana's PSD program. 72 *Fed. Reg.* 33395 (effective July 18, 2007). For all violations cited in this Notice, the applicable Indiana PSD regulations are the regulations codified in the Indiana Administrative Code.

6. The PSD regulations contained in Title 326 of the Indiana Administrative Code (IAC) Article 2-2 were incorporated into and part of the Indiana SIP at the time of the major modifications at issue in this NOV/FOV, and have been approved by EPA and are federally enforceable requirements. All citations to the PSD regulations herein refer to the provisions of the Indiana SIP as applicable at the time of the projects.

7. 326 IAC 2-2-2(c) provides that "No new major stationary source or major modification to which the requirements of sections 3 through 5, 7, 8(a), 10, 14, and 15 of this rule apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet the requirements of sections 3 through 5, 7, 8(a), 10, 14, and 15 of this rule."

8. 326 IAC 2-2-2(b) provides that "The requirements of this rule apply to the construction of any new major stationary source or any project at an existing major stationary source in an area designated as attainment or unclassifiable in 326 IAC 1-4."

9. The Indiana SIP and PSD regulations define "major stationary source" as, "Any of the following stationary sources of air pollutants that are located or proposed to be located in an attainment or unclassifiable area as designated in 326 IAC 1-4 and that emit or have the potential to emit one hundred (100) tons per year or more of any regulated NSR pollutant: (A) Fossil fuel-fired steam electric plants of more than two hundred fifty million (250,000,000) British thermal units per hour heat input." See 326 IAC 2-2-1(ff).

10. The Indiana SIP and PSD regulations define "major modification" as "any physical change in, or change in the method of operation of, a major stationary source that would result in a significant emissions increase and a significant net emissions increase of a regulated NSR pollutant from the major stationary source." See 326 IAC 2-2-1(dd).

11. The Indiana SIP and PSD regulations define "significant" as "in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emission that would equal or exceed any of the following rates: ... Carbon monoxide: one hundred (100) tons per year; Nitrogen oxides: forty (40) tons per year; Sulfur dioxide: forty (40) tons per year; PM: twenty-five (25) tons per year; PM₁₀: fifteen (15) tons per year; PM_{2.5}: ten (10) tons per year; Sulfuric acid mist: seven (7) tons per year... Pollutant greenhouse gases (GHGs): as specified in subsection (zz) ..." See 326 IAC 2-2-1(ww).

12. 326 IAC 2-2-8(b) provides that "(b) ...in circumstances where there is a reasonable possibility, within the meaning of this subsection, that a project that is not a part of a major modification may result in a significant emissions increase of a regulated NSR pollutant, and the owner or operator elects to use the method specified in section 1(pp)(2)(A) of this rule for calculating projected actual emissions:

(1) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(A) A description of the project.

(B) Identification of any emissions unit whose emissions of a regulated NSR pollutant could be affected by the project.

(C) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the following:

(i) The baseline actual emissions.

(ii) The projected actual emissions.

(iii) The amount of emissions excluded under section 1(pp)(2)(A)(iii) of this rule.

(iv) An explanation for why the amount was excluded, and any netting calculations, if applicable.

(2) If the emissions unit is an existing electric utility steam-generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in subdivision (1) to the department. Nothing in this subdivision shall be construed to require the owner or operator of the unit to obtain any determination from the department before beginning actual construction." See also 40 C.F.R. 52.21(r)(6).

Non-attainment New Source Review Requirements

13. The Non-attainment New Source Review (NNSR) provisions of Part D of Title I of the Act require preconstruction review and permitting for modifications of stationary sources located in nonattainment areas. See 42 U.S.C. §§ 7501-15. Pursuant to applicable regulations, if a major stationary source located in a nonattainment area is planning to make a major modification, then that source must obtain a NNSR permit before beginning actual construction. To obtain this permit, the source must, among other things, employ pollution controls that reflect the Lowest Achievable Emission Rate (LAER).

14. On October 7, 1994, EPA approved 326 IAC 2-1 and 2-3. 59 Fed. Reg. 51108, effective December 6, 1994. Included in the NNSR SIP revisions were changes to the definitions previously codified at 325 IAC 1-1, now codified at 326 IAC 2-3-1.

Indiana State Implementation Plan

15. Pursuant to Section 110 of the Act, 42 U.S.C. § 7410, EPA approved 326 IAC 5-1; Opacity Limitations, as part of the federally enforceable Indiana SIP for Particulate Matter (PM) on July 16, 2002 (67 *Fed. Reg.* 46589).

16. 326 IAC 5-1-2 states that, unless otherwise stated, opacity shall meet the following limitations: (A) Opacity shall not exceed an average of forty percent in any one six-minute averaging period, and (B) Opacity shall not exceed sixty percent for more than a cumulative total of fifteen minutes in a six-hour period.

New Source Performance Standards

17. Pursuant to Section 111 of the Act, 42 U.S.C. § 7411, EPA promulgated 40 C.F.R. Part 60, Subpart D. This includes § 60.42(a)(2), which states that “no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility any gases that: exhibit greater than 20 percent opacity except for one six-minute period per hour of not more than 27 percent opacity.”

18. Pursuant to 40 C.F.R. § 60.43(a)(2) “no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility any gases that contain SO₂ in excess of: (2) 520 ng/J heat input (1.2 lb/MMBtu) derived from solid fossil fuel or solid fossil fuel and wood residue, except as provided in paragraph (e) of this section.”

Title V

19. Section 502(d)(1) of the Act, 42 U.S.C. § 7661a(d)(1), requires each State to develop and submit to EPA an operating permit program which meets the requirements of Title V of the Act. On November 14, 1995 (60 *Fed. Reg.* 57188), EPA granted Indiana interim approval of its program, with final approval on July 30, 2001 (66 *Fed. Reg.* 39293).

20. EPA promulgated full approval of Indiana’s Title V program on December 4, 2001. Indiana’s Title V program became effective on November 30, 2001 (66 *Fed. Reg.* 62969).

21. The Indiana regulations governing the Title V permitting program are codified at 326 IAC 2-7.

22. The Indiana Department of Environmental Management (IDEM) issued a Title V Operation Permit to IPL for the Petersburg Generating Station on December 22, 2008 and July 18, 2013 (Permit #s T 125 6565-00002 and T 125-30045-00002, respectively). Additionally, IDEM issued a Second Significant Permit Modification (T125-34687-00002) on June 18, 2015. The permit contains the following relevant provisions for purposes of this NOV/FOV:

- a. Section C.2 – Opacity: Pursuant to 326 IAC 5-1-2 (Opacity Limitations), except as provided in 326 IAC 5-1-3 (Temporary Alternative Opacity Limitations), “opacity shall

meet the following, unless otherwise stated in this permit: (a) Opacity shall not exceed an average of forty percent (40%) in any one (1) six (6) minute averaging period as determined in 326 IAC 5-1-4. (b) Opacity shall not exceed sixty percent (60%) for more than a cumulative total of fifteen (15) minutes in a six (6) hour period."

b. Section D.1.2 – Startup, Shutdown, and Other Opacity Limits.

"(a) Pursuant to 326 IAC 5-1-13(c) (Temporary Alternative Opacity Limitations), the following applies to Units 1 and 2:

(1) When building a new fire in a boiler, opacity may exceed the applicable limitation established in 326 IAC 5-1-2 for a period not to exceed a total of four (4) hours (forty (40) six (6)-minute averaging periods) during the startup period, or until the flue gas temperature entering the PM control device reaches two hundred and fifty (250) degrees Fahrenheit at the inlet to the electrostatic precipitator for Unit 1 and the inlet of the electrostatic precipitator or inlet of the baghouse for Unit 2, whichever occurs first. For Unit 1, compliance with the opacity limit is determined by adding the Unit 1 Scrubbed and Unit 1 Bypass stacks' opacity exceedances during the startup period. For Unit 2, compliance with the opacity limit is determined by adding the Unit 2 Scrubbed and Unit 2 Bypass stacks' opacity exceedances during the startup period.

(2) When shutting down a boiler, opacity may exceed the applicable limitation established in 326 IAC 5-1-2 for a period not to exceed a total of two (2) hours (twenty (20) six (6)-minute averaging periods) during the shutdown period.

(3) Operation of the electrostatic precipitators are not required during these times.

(b) When removing ashes from the fuel bed or furnace in a boiler or blowing tubes, opacity may exceed the applicable limit established in 326 IAC 5-1-2. However, opacity levels shall not exceed sixty percent (60%) for any six (6)-minute averaging period and opacity in excess of the applicable limit shall not continue for more than one (1) six (6)-minute averaging period in any sixty (60) minute period. The averaging periods shall not be permitted for more than three (3) six (6)-minute averaging periods in a twelve (12) hour period. [326 IAC 5-1-3(b)]

(c) If a facility cannot meet the opacity limitations in (a) and (b) of this condition, the Permittee may submit a written request to IDEM, OAQ, for a temporary alternative opacity limitation in accordance with 326 IAC 5-1-3(d). The Permittee must demonstrate that the alternative limit is needed and justifiable.

(d) This provision, D.1.2, shall no longer apply after PM CEMS is installed, certified, and operating to measure PM emissions pursuant to this permit."

c. Section D.2.2(a)(2) – NSPS Subpart D, 326 IAC 12: "Pursuant to 326 IAC 12 and 40 C.F.R. Part 60, Subpart D, emissions from Unit 3 and Unit 4 shall not exceed the following: (a)(2) "twenty percent (20%) opacity except for one six-minute period per hour of not more than twenty-seven percent (27%) opacity. [40 C.F.R. 60.42(a)(2)] Pursuant to 40 C.F.R. 60.11(c), this opacity standard is not applicable during periods of startup, shutdown, or malfunction."

- d. Section D.2.2 (b)(2) – NSPS Subpart D, 326 IAC 12: “Pursuant to 326 IAC 12 and 40 C.F.R. Part 60, Subpart D, emissions from Unit 3 and Unit 4 shall not exceed the following: (b)(2) “one and two-tenths (1.2) pounds SO₂ per million Btu (MMBtu) heat input derived from solid fossil fuel.”
- e. Section D.2.3 (a) – Pursuant to 326 IAC 2-2-3 (PSD BACT), the following requirements shall apply to Unit 4: (a) Sulfur dioxide (SO₂) emissions shall not exceed 1.2 pounds per MMBtu heat input when burning coal.

FACTUAL BACKGROUND

23. IPL is an Indiana corporation and a subsidiary of the AES Corporation.

24. IPL is a “person,” as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

25. At all times relevant to this NOV/FOV, IPL was the owner and operator of the Petersburg Station.

26. The Petersburg Station is located in Pike County, Indiana, which is an area classified as; nonattainment with the 2010 Primary Sulfur Dioxide National Ambient Air Quality Standard (NAAQS) from October 4, 2013 to the present and attainment for all other NAAQS for all time periods relevant to the violations cited herein. As described in IDEM’s “Revisions to the Indiana State Implementation Plan for Sulfur Dioxide and the Final 1-hour Sulfur Dioxide Attainment Demonstration” submitted to U.S. EPA on October 2, 2015, the IPL Petersburg Station has been determined to be a significant contributor to the Pike County SO₂ NAAQS exceedence.

27. The Petersburg Station is a fossil fuel-fired steam electric plant with a potential to emit greater than 100 tons per year of sulfur dioxide (SO₂), nitrogen oxides (NO_x), carbon monoxide (CO), and particulate matter (PM). The station consists of four coal-fired boilers and corresponding turbines for electricity generation. Units 1 through 4 have net generating capacities of 229, 412, 540 and 530 MW_{net} and commenced construction in 1964, 1969, 1977 and 1978, respectively.

28. The Petersburg Station is a “fossil fuel-fired steam electric plant of more than 250 million British thermal units per hour heat input.” Therefore, the station constitutes a “major stationary source” within the meaning of 326 IAC 2-2-1(ff) and 40 C.F.R. § 52.21(b)(1)(i)(a); and a “major emitting facility” within the meaning of Section 169(1) of the Act, 42 U.S.C. § 7479(1).

29. The Petersburg Station is a “major source” as defined in Section 501(2) of the Act, 42 U.S.C. § 7661(2) and 40 C.F.R. § 70.2.

30. On March 23, 2011, and October 10, 2013, IPL submitted pre-project notification letters to the IDEM describing activities to be performed during two outages and providing an “Emissions

Analysis". It is EPA's understanding that IPL intended these letters to fulfill the requirements contained in 326 IAC 2-2-8 (Source Obligations) and 40 C.F.R. § 52.21(r)(6) to document, maintain a record of, and submit a copy of information regarding projects where there is "a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase of a regulated NSR pollutant".

31. As described in IPL's March 23, 2011, "Spring 2011 Outage", pre-project notification letter, IPL replaced various boiler and turbine components at Petersburg Station Unit 1 from approximately March 25, 2011 to June 19, 2011 (see Attachment B of IPL's notification letter).

32. As described in IPL's October 10, 2013, "Fall 2013 Outage", pre-project notification letter, IPL replaced various boiler and turbine components at Petersburg Station Unit 2 from approximately October 11, 2013 to January 30, 2014, including but not limited to the Unit Boiler finishing superheat pendants and water wall tube panels (see Attachment B of IPL's notification letter).

33. IPL operated its sulfuric acid mitigation systems intermittently from March 24, 2015 through August 24, 2015. The systems were not operated, while the corresponding boiler was operating at the specific units for the following number of hours:

- a. Petersburg Unit 1: 558 hours
- b. Petersburg Unit 2: 597 hours
- c. Petersburg Unit 4: 546 hours

34. IPL reported a total of 144 hours of SO₂ excess emissions in its quarterly excess emission reports for 2nd Quarter 2011 through 4th Quarter 2011 and 2nd Quarter 2012 through 1st Quarter 2015 for Petersburg Unit 3.

35. IPL reported a total of 93 hours of SO₂ excess emissions in its quarterly excess emission reports for 2nd Quarter 2011 through 4th Quarter 2011 and 2nd Quarter 2012 through 1st Quarter 2015 for Petersburg Unit 4.

36. IPL reported a total of 5,208 minutes of opacity excess emissions based on continuous opacity monitoring in its response to EPA's information request response received on October 27, 2015 for 2011 through 2015 at Petersburg Unit 1.

37. IPL reported a total of 6,084 minutes of opacity excess emissions based on continuous opacity monitoring in its response to EPA's information request response received on October 27, 2015 for 2011 through 2015 at Petersburg Unit 2.

38. IPL reported a total of 5,724 minutes of opacity excess emissions based on continuous opacity monitoring in its response to EPA's information request response received on October 27, 2015 for 2011 through 2015 at Petersburg Unit 3

39. IPL reported a total of 4,416 minutes of opacity excess emissions based on continuous opacity monitoring in its response to EPA's information request response received on October 27, 2015 for 2011 through 2015 at Petersburg Unit 4.

VIOLATIONS

Prevention of Significant Deterioration

40. The physical changes and/or changes in the method of operation performed in each outage referred to in Paragraphs 31 and 32, above, resulted in a significant emissions increase and a significant net emissions increase, as defined in the relevant PSD regulations and 326 IAC 2-2 of the Indiana SIP, of SO₂, NO_x, sulfuric acid mist, and/or PM.

41. The physical changes and/or changes in the method of operation performed in each outage referred to in Paragraphs 31 and 32, above, constitute "major modifications" under the PSD regulations of 40 C.F.R. § 52.21, and 326 IAC 2-2-1 of the Indiana SIP.

42. Each project referred to in Paragraphs 31 and 32, above, is a major modification based on the entire scope of work performed during the outage. In these instances, the entire scope of work performed during the outage is properly considered together when determining whether a modification occurred. In addition, individual physical changes and/or changes in the method of operation specifically listed above also are major modifications without reference to the rest of the scope of work performed during the outage. Each of the physical changes listed above increased the availability of the unit and increased the generation of electricity at the unit.

43. For each of the modifications referred to in Paragraphs 31 and 32, above, IPL failed to obtain a PSD permit as required by 40 C.F.R. § 52.21, and 326 IAC 2-2 of the Indiana SIP.

44. IPL is in violation of PSD requirements, Section 165 of the Act, 42 U.S.C. § 7475, 40 C.F.R. § 52.21, and 326 IAC 2-2 of the Indiana SIP for constructing major modifications, as referred to in Paragraphs 31 and 32, above, to existing major sources at their Petersburg Station without applying for or obtaining the PSD permits, and operating the modified facilities without installing BACT or going through PSD review, and installing appropriate emission control equipment in accordance with a BACT analysis.

45. IPL violated 326 IAC 2-2-8(b) of the Indiana SIP and 40 C.F.R. 52.21(r)(6) of the PSD rules by failing to provide an adequate explanation as to why the amount of emissions excluded in its March 23, 2011, February 27, 2013, and October 10, 2013 pre-project notification letters could be excluded in accordance with the rules.

Non-attainment New Source Review

46. The physical changes and/or changes in the method of operation performed in the outage referred to in Paragraph 32, above, resulted in a significant emissions increase and a

significant net emissions increase, as defined in the relevant Non-attainment New Source Review (NNSR) regulations and 326 IAC 2-3 of the Indiana SIP, of SO₂.

47. The physical changes and/or changes in the method of operation performed in the outage referred to in Paragraph 32, above, constituted a "major modification" under the NNSR regulations and 326 IAC 2-3 of the Indiana SIP.

48. The outage referred to in Paragraph 32, above, is a major modification based on the entire scope of work performed during the outage. In these instances, the entire scope of work performed during the outage is properly considered together when determining whether a modification occurred. In addition, individual physical changes and/or changes in the method of operation specifically listed above also are major modifications without reference to the rest of the scope of work performed during the outage. Each of the physical changes listed above increased the availability of the unit and increased the generation of electricity at the unit.

49. For the modification(s) referred to in Paragraph 32, above, IPL failed to obtain a NNSR permit as required by the NNSR regulations and 326 IAC 2-3 of the Indiana SIP.

50. IPL is in violation of NNSR requirements, Part D of the Act, and 326 IAC 2-3 of the Indiana SIP for constructing major modification(s), as referred to in Paragraph 32, above, to an existing major source at their Petersburg Station without applying for or obtaining the NNSR permit, and operating the modified facilities without installing controls able to achieve the Lowest Achievable Emission Rate (LAER) or going through NNSR review, and installing appropriate emission control equipment in accordance with a LAER analysis.

New Source Performance Standard

51. IPL's Units 3 and 4 violated and continues to violate NSPS Subpart D by exceeding the applicable opacity limit.

52. IPL's Units 3 and 4 violated NSPS Subpart D by emitting SO₂ in excess of the applicable limit.

Indiana State Implementation Plan

53. IPL's Units 1, 2, 3 and 4 violated and continues to violate 326 IAC 5-1-2 of the Indiana SIP by exceeding the applicable opacity limit.


ENFORCEMENT

54. Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides that at any time after the expiration of 30 days following the date of the issuance of a Notice of Violation, the Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the state implementation plan or permit, issue an administrative penalty order pursuant to Section 113(d), or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

55. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides in part that if the Administrator finds that a person has violated, or is in violation of any requirement or prohibition of any rule...promulgated...under...[Title I or Title V of the Act], the Administrator may issue an administrative penalty order under Section 113(d), issue an order requiring compliance with such requirement or prohibition, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

Date

2/5/16


George P. Czerniak
Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Kathy Jones, certify that I sent a Notice and Finding of Violation, No. EPA-5-16-IN-03, by Certified Mail, Return Receipt Requested, to:

Jeff Harter, Environmental Manager
Indianapolis Power & Light Company
Petersburg Generating Station
6925 N. State Road 57
P.O. Box 436
Petersburg, Indiana 47567-0436

I also certify that I sent copies of the Notice of Violation and Finding of Violation by first-class mail to:

Phil Perry, Branch Chief
Office of Air Quality / Compliance Branch
Indiana Department of Environmental Management
100 North Senate Avenue/Room IGCN 1003
Indianapolis, Indiana 46204-2251

On the 5th day of February 2016.

Kathy Jones
Kathy Jones
Program Technician
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER: 7014 2870 0001 9577 8657



Sierra Club FOIA Request re Petersburg, Indiana Generating Station

Tony Mendoza

to:

Group R5Foia

12/06/2016 12:11 PM

Hide Details

From: Tony Mendoza <tony.mendoza@sierraclub.org>

To: Group R5Foia/R5/USEPA/US@EPA,

1 Attachment



Petersburg NOVx FOIA.pdf

Dear Sir or Madam - Attached please find a FOIA request seeking information regarding Clean Air Act compliance at the Petersburg Generating Station in Indiana. Please let me know if you have any questions. Thank you. Tony

--

Tony Mendoza

Staff Attorney

Sierra Club Environmental Law Program

2101 Webster St., 13th Floor
Oakland, CA 94612

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